

IN THE CIRCUIT COURT OF HAMILTON COUNTY, TENNESSEE

JEFFREY KENNEDY

Plaintiff,

vs.

GARRY P. EMBERSON, and
GEMSTAR TRANSPORT, LLC

Defendants.

No.: 20C544 BY

Division _____

JURY DEMANDED

FILED IN OFFICE
2020 MAY 12 PM 3:22
LARRY L. HENRY, CLERK
HBL

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COMPLAINT

COMES NOW Plaintiff, Jeffrey Kennedy, by and through his attorneys, and for his cause of action, states:

I. PARTIES & JURISDICTION.

1. Plaintiff, Jeffrey Kennedy, is a resident of Apison, Hamilton County, Tennessee.
2. Defendant, Garry P. Emberson is a resident of Eustis, Florida, and can be served with process at 3001 Linmont Lane, Eustis, FL 32726.
3. Defendant, Gemstar Transport, LLC, is a Florida limited liability company with its principal place of business located at 3001 Linmont Lane, Eustis, Florida 32726. Gemstar Transport, LLC, can be served with process through its Registered Agent, Garry P. Emberson, at 3001 Linmont Lane, Eustis, Florida 32726.
4. This action arises from the personal injuries suffered by the Plaintiff as a direct and proximate result of a motor-vehicle collision that occurred in Hamilton County, Tennessee,



on May 17, 2019. Said collision was caused by the negligent driving of Defendant, Garry P. Emberson, who was acting at the time as the agent of, and/or in the course and scope of his employment with, Defendant Gemstar Transport, LLC.

5. Based upon the foregoing, jurisdiction and venue properly lie with this Court.
6. Defendants are being served pursuant to Tennessee Code Annotated §§ 20-2-203 through 20-2-207. As such, as set out in Tennessee Code Annotated § 20-2-203(e), Defendants are each subject to appear in Hamilton County, Tennessee, for the purpose of giving a pre-trial discovery deposition.

II. FACTS.

7. On January 19, 2019, Plaintiff, Jeffrey Kennedy, was operating a 2001 Toyota Tundra in Chattanooga, Tennessee. He was traveling northbound on Interstate 75, and slowing along with other traffic around him. Mr. Kennedy was in his proper lane of travel. At approximately the same time Defendant, Garry P. Emberson (hereinafter "Defendant Emberson"), was operating a 2013 Kenworth T660 tractor-trailer. He was also traveling northbound on Interstate 75 and was directly behind the vehicle occupied by the Plaintiff.
8. Despite being in an elevated position, Defendant Emberson failed to observe the other traffic slowing and stopped in front of him. Defendant Emberson was following too closely and failed to control or safely stop his vehicle. Instead, he struck the rear of Plaintiff's vehicle.

9. Plaintiff avers that at all times relevant hereto, the 2013 Kenworth tractor-trailer driven by Defendant Garry P. Emberson was owned by Defendant Garry P. Emberson, and Defendant Gemstar Transport, LLC.
10. Plaintiff avers that at all times relevant hereto, Defendant Emberson operated the 2013 Kenworth tractor-trailer with the permission of, for the use and benefit of, as an agent of, and within the course and scope of his employment with, Defendants Gemstar Transport, LLC.

III. CAUSES OF ACTION AGAINST DEFENDANT EMBERSON.

11. Among the specific acts of negligence on the part of Defendant, Garry P. Emberson, were:
 - A. Failing to keep a proper lookout ahead;
 - B. Failing to operate the tractor-trailer as an ordinary and prudent person would have done under existing traffic conditions;
 - C. Failing to keep the tractor-trailer under due and proper control;
 - D. Driving the tractor-trailer at an excessive rate of speed for existing traffic conditions;
 - E. Driving the tractor-trailer while distracted, i.e., eating, reading, talking, etc.;

- F. Following behind Plaintiff's vehicle too closely, at a distance less than was reasonable and prudent when considering the speed of the vehicles and existing traffic conditions, in violation of his common law duties and *Tennessee Code Annotated* §55-8-124;
 - G. Failing to exercise due care in violation of his common law duties and the provisions of *Tennessee Code Annotated* §55-8-136(b).
12. The above common-law acts of negligence, and Defendant Emberson's negligent *per se* violations of *Tennessee Code Annotated* §§ 55-8-124 and 55-8-136(b), proximately caused the collision at issue in this lawsuit and the injuries suffered by the Plaintiff therein.

IV. LIABILITY OF DEFENDANTS GEMSTAR TRANSPORT, LLC.

13. At all times relevant to the collision underlying this suit, Defendant Emberson operated the 2013 Kenworth tractor-trailer within the course and scope of his employment with, within his authority as an agent of, under the control and supervision of, and in furtherance of the interests of, Defendant, Gemstar Transport, LLC. Defendant Emberson' negligent actions and omissions are imputed to Defendant Gemstar Transport, LLC, under theories of agency, *respondeat superior*, and vicarious responsibility under the Vehicle Registration Law pursuant to certain statutes of the State of Tennessee, to wit:

T.C.A. Section 55-10-311. Prima facie evidence of ownership of automobile and use in owner's business.

T.C.A. Section 55-10-312. Registration prima facie evidence of ownership and that operation was for owner's benefit.

14. Additionally, Plaintiff avers that Defendant Gemstar Transport, LLC was negligent in its hiring, retention, and training / supervision of Defendant Garry P. Emberson Plaintiff avers that Defendant Gemstar Transport, LLC knew, or should have known, that Defendant Emberson was unfit for employment as a driver at the time he was hired, or in the

alternative, that Defendant Emberson became unfit for continued employment between his date of hire and the date of the wreck at issue in this lawsuit. Plaintiff further alleges that Defendant Gemstar Transport, LLC failed to properly train and/or supervise Defendant Garry P. Emberson, and but for that failure, would have or should have discovered that he was unable to perform his job duties in a safe and reasonable manner. Plaintiff avers that the above-described negligence of Defendant Gemstar Transport, LLC proximately-caused or contributed to cause, the motor vehicle collision at issue in this lawsuit.

V. CAUSATION.

15. Plaintiff hereby incorporates by reference the allegations and causes of action pled in the preceding Paragraphs of this Complaint. The foregoing common-law negligent acts and omissions and the negligence *per se* statutory violations committed by Defendant Emberson, did directly and proximately cause the collision between the Defendants' tractor-trailer and the vehicle occupied by Plaintiff on May 17, 2019. Defendants' negligence thereby proximately-caused Plaintiff Jeffrey Kennedy to suffer severe injuries, and caused Plaintiff to incur extensive damages, as set forth herein below.

VI. SPECIAL & GENERAL DAMAGES.

16. Plaintiff hereby incorporates by reference the allegations and causes of action pled in the preceding Paragraphs of this Complaint. Plaintiff, Jeffrey Kennedy, avers that as a direct and proximate result of the above-described acts of negligence on the part of Defendants that he was caused to suffer the following injuries and incur the following damages:

- A. Painful injuries caused by the Defendants' negligence;
- B. Pain and suffering;
- C. Mental Anguish;
- D. Medical and hospital expenses;
- E. Out-of-pocket expenses as a result of injuries sustained;
- F. Loss of enjoyment of life;
- G. Property Damage to the 2001 Toyota Tundra driven and owned by Plaintiff, Jeffrey Kennedy, VIN #5TBRT34151S160501;
- H. Lost wages and loss of future earning capacity.

Plaintiff avers that these damages were incurred as a direct and proximate result of the above-described negligence of Defendants, Garry P. Emberson and Gemstar Transport, LLC.

VII. PLAINTIFF'S MEDICAL EXPENSES PRESUMED REASONABLE AND NECESSARY BY LAW.

17. Jeffrey Kennedy incurred the following portion of reasonable and necessary medical expenses incurred on his behalf as a result of the injuries he sustained in this wreck. Pursuant to T.C.A. §24-5-113(a) and the ruling in Borner v. Autry, 284 S.W.3d 216 (Tenn. 2009), Plaintiff attaches the following medical expenses incurred by Jeffrey Kennedy that were reasonable and necessary and caused by the above-described acts of Defendants to establish the statutory presumption of the same:

<u>Provider</u>	<u>Amount</u>
Memorial EMS	\$ 1,742.00

05/17/2019	\$ 1610.00	
	\$ 132.00	
Tennessee River Physicians		\$ 1,180.00
05/17/2019	\$ 1180.00	
BenchMark Physical Therapy		\$ 659.50
06/13/2019	\$ 270.00	
	\$ 70.50	
	\$ 69.00	
	\$ 40.00	
06/24/2019	\$ 141.00	
	\$ 69.00	
TOTAL:		\$ 3,581.50

VII. PRAYER FOR RELIEF

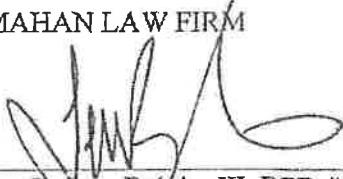
18. Plaintiff sues the Defendants for personal injuries and related damages, and for property damage in an amount that the jury deems just and appropriate, but no more than **ONE HUNDRED EIGHTY THOUSAND AND NO/100 DOLLARS (\$180,000.00)**, along with damages for accrued post-judgment interest at the legal rates, the costs of this cause including reasonable expenses, and any and all further damages to which he may be entitled.
19. WHEREFORE, Plaintiff, Jeffrey Kennedy, sues Defendants Garry P. Emberson and Gemstar Transport, LLC, for compensatory damages and seeks fair, just, and reasonable compensation from Defendants in an amount that the jury deems just and appropriate, but no more than **ONE HUNDRED EIGHTY THOUSAND AND NO/100 DOLLARS**

(\$180,000.00), along with accrued post-judgment interest at the legal rates, the costs of this cause including reasonable expenses, and any and all further damages to which he may be entitled.

20. PLAINTIFF DEMANDS A JURY OF TWELVE PERSONS TO TRY THESE ISSUES, WHEN JOINED.

Respectfully submitted,

McMAHAN LAW FIRM

By: 

R. Lew Belvin, III, BPR #028325
Attorneys for Plaintiff
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423-756-8120 fx

Memorial Hospital
P.O. BOX 644497
PITTSBURGH, PA 15264-4497
1-888-210-4691

1

FINAL

KENNEDY, JEFFREY

0050706397 05/17/19 05/17/19 06/06/19

KENNEDY, JEFFREY

CIGNA

[REDACTED]

05/17/19	35402392	ALS, EMERGENCY	1	1610.00
05/17/19	35401678	ALS/BLS MILEAGE	44	132.00
07/25/19	ACIGNA	ADJ CIGNA	1	-721.19
07/26/19	PCIGNA	PMT CIGNA; \$0 Entry for Exp # of Rcpt's	1	0
{ 07/26/19	PCIGNA	PMT CIGNA; OTHER RCP	1	-431.09
*** SUMMARY BY SERVICE ***				
		EMS MEDICAL 540 RECEIPTS, ADJUSTMENTS, ETC.	45	1742.00
			3	-1152.28

0050706397

1742.00
-1152.28
589.72
0.00

589.72

**TENNESSEE RIVER
PHYSICIANS, PLLC**

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TENNESSEE RIVER PHYSICIANS
PLLC
PO BOX 20882
BELFAST, ME 04915-4105
Billing phone: (678) 235-6760

GUARANTOR NAME AND ADDRESS
JEFFREY KENNEDY

PATIENT # 3102851 **PATIENT NAME** JEFFREY KENNEDY

DOB [REDACTED] **HOME TELEPHONE** [REDACTED]

Billing Summary

Claim ID	Procedure	Diagnosis	Date of Service	Post Date	Type	Reason	Plan	Supervising Provider	Ins. 1	Ins. 2	Patient
<u>Claim ID 5959914</u> <u>5959914</u>	70450	S060X0A	05/17/2019	05/18/2019	CHARGE	70460	MEDLYTIX (MOVED-HOLD)	BRITTANY WALSH	\$0.00		
							OUTSTANDING		\$0.00	\$0.00	\$0.00
<u>5959914</u>	72128	G8911	05/17/2019	05/18/2019	CHARGE	72128	MEDLYTIX (MOVED-HOLD)	BRITTANY WALSH	\$0.00		
							OUTSTANDING		\$0.00	\$0.00	\$0.00
<u>5959914</u>	72131	S39012A	05/17/2019	05/18/2019	CHARGE	72131	MEDLYTIX (MOVED-HOLD)	BRITTANY WALSH	\$0.00		
							OUTSTANDING		\$0.00	\$0.00	\$0.00
<u>5959914</u>	99285	S060X0A, S39012A, S161XXA, G8911	05/17/2019	05/18/2019	CHARGE	99285	MEDLYTIX (MOVED-HOLD)	BRITTANY WALSH	\$1,180.00		
							OUTSTANDING		\$1,180.00	\$0.00	\$0.00
<u>5959914</u>	MISCG9530	S060X0A	05/17/2019	05/18/2019	CHARGE	MISCG9530	MEDLYTIX (MOVED-HOLD)	BRITTANY WALSH	\$0.00		
							OUTSTANDING		\$0.00	\$0.00	\$0.00
<u>5959914</u>	MISCG9531	S060X0A	05/17/2019	05/18/2019	CHARGE	MISCG9531	MEDLYTIX (MOVED-HOLD)	BRITTANY WALSH	\$0.00		
							OUTSTANDING		\$0.00	\$0.00	\$0.00
TOTAL CHARGE OUTSTANDING AS OF 06/27/2019 \$1,180.00 \$0.00 \$0.00											



10-09-19

Jeffrey Kennedy



0951957

Diagnosis

1. M54.2 Cervicalgia
2. M25.511 Pain in right shoulder
3. M25.522 Pain in left elbow
4. M25.532 Pain in left wrist
5. V89.2XXS Person injured in unspecified motor-vehicle accident, traffic, sequela

06-13-19	97163	PT Eval-High Complexity	270.00
06-13-19	97110	Therapeutic Exercise [1]	70.50
06-13-19	97140	Manual Therapy [1]	69.00
06-13-19	97010	Hot/Cold pack	40.00
06-24-19	97110	Therapeutic Exercise [2]	141.00
06-24-19	97140	Manual Therapy [1]	69.00
<hr/>			
			659.50

Number of Visits: 2

Total Charges: 659.50

Respectfully,

BenchMark Rehab Partners

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Chattanooga, TN 37421
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